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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

CRAIG, PAULA L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/771,557

Applicant(s)

OLIWA, DAVID

Examiner

Paula L. Craig

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/3/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/7/04 & 12/6/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. In Claim 5, therefore, the wireless transmitter and receiver must be shown or the features canceled from the claim. In Claim 10, the pager configuration must be shown or the feature canceled from the claim. No new matter should be entered.
2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-3, 5-6, and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent Publication No. 2002/0173758 A1 to Whiting.

6. For Claim 1, Whiting '758 shows an apparatus for draining a urine collection bag worn by a person (Fig. A, Abstract, and paragraph 23). The apparatus includes an electrically operated drain valve coupled to a drain tube of the urine collection bag (pinch valve 9 coupled to flexible tube 10 of urine drain bag 8, Fig. A and paragraphs 21-22). A control device remotely controls the drain valve (remote control transmitter device 1, Figs. A and B and paragraphs 16 and 21-22). The control device is adapted

to be worn by the person (paragraphs 8 and 22). The control device includes a drain valve actuation control (switches 18 and 19, paragraphs 21-22). The remote control transmitter device taught by Whiting '758 is shown as being unlabeled and having no indication of its function which would be clear to bystanders (Figs. A and B). The Examiner notes that such transmitter devices are widely used for various purposes, so that the purpose of an unlabeled transmitter would not be immediately known. Whiting '758 also indicates that the apparatus can be fitted together in a wearable pouch for a discreet appearance (paragraph 22). Using an unlabeled remote control transmitter device, or fitting the apparatus discreetly in a pouch, would be possible ways to conceal the function of the control device. Therefore, the control device of Whiting '758 is outwardly configured to conceal its function.

7. For Claim 2, Whiting '758 teaches the control device including an electrical power source (rechargeable battery 7, Figs. A and B and paragraph 21).

8. For Claim 3, Whiting '758 teaches the apparatus being fitted in a wearable pouch, vest, or the like (paragraph 22). Whiting is silent as to the control device being adapted to be worn on a belt. However, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. The remote control transmitter of Whiting is capable of being worn on a belt. *In re Hutchison*, 69 USPQ 138 (CCPA 1946).

9. For Claim 5, Whiting '758 teaches the control device including a wireless transmitter (wireless remote transmitter 1, Figs. A and B and paragraph 22). The drain

valve includes a wireless receiver (wireless receiver 2, Figs. A and B and paragraphs 21-22).

10. For Claim 6, Whiting '758 teaches the drain valve being secured to the leg of a person (paragraph 23). Whiting is silent as to the drain valve being secured to the ankle of the leg. However, attachment to the ankle is not a structural limitation of the apparatus. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). The apparatus of Whiting is capable of attachment to the ankle.

11. For Claim 8, Whiting '758 teaches the drain valve actuation control comprising a push-button switch (Figs. A and B and paragraphs 21-22).

12. Claim 4 is rejected under 35 U.S.C. 103(a) as being obvious over Whiting '758 in view of U.S. Patent No. 4,631,061 to Martin and 5,555,490 to Carroll.

13. For Claim 4, Whiting '758 does not disclose the control device being connected to the drain valve with a cable. However, both radio transmitters and cables are well known for remote operation. Martin confirms this and teaches a wearable urine collection device with its controls connected by a cable to a backpack (see paired conductors 25, Figs. 1 and 7 and col. 3, lines 42-61). Martin indicates that the system is compact, inconspicuous, and comfortable to wear for urinary incontinent people (col. 4, lines 59-68). Whiting/Martin does not expressly disclose the cable being a flexible flat

cable. However, the use of flexible flat wire cable to connect wearable electronic devices is well known. Carroll confirms this and teaches the use of flexible flat wire cable to connect wearable electronic components (Fig. 15 and Abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify the apparatus of Whiting to use a flat flexible wire cable to connect up the control device, as taught by Martin and Carroll, to provide an inconspicuous and comfortable system for urinary incontinent people.

14. Claim 7 is rejected under 35 U.S.C. 103(a) as being obvious over Whiting '758 in view of U.S. Patent No. 5,439,456 to Fabricant.

15. For Claim 7, Whiting '758 teaches all the limitations of Claim 6, as described above in paragraph 11. Whiting teaches the drain valve being secured to the leg of the person (paragraph 23). Whiting does not teach a strap having a hook and loop closure. Fabricant teaches a strap having a hook and loop closure for fastening a urine bag to the leg of a person (Figs. 1-4, col. 3, lines 37-59, and col. 4, lines 1-6). Fabricant indicates hook and loop fasteners are preferred over other types of fasteners to firmly and releasably secure the apparatus while allowing for adjustability in diameter to fit around the leg (col. 3, lines 17-28 and 60-64). It would have been obvious to one of ordinary skill in the art to modify the apparatus of Whiting to include a strap having a hook and loop closure as taught by Fabricant, to allow for adjustability in fit.

16. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being obvious over Whiting '758 in view of U.S. Patent No. 6,520,334 to Hoover.

For Claims 9 and 10, Whiting teaches all the limitations of Claim 1, as described above in paragraph 7. Whiting teaches the control device being outwardly configured to resemble a wearable pouch or the like (paragraph 22). Whiting does not expressly disclose the control device being configured to resemble a personal electronic device or a pager. Hoover teaches a container which is disguised as a pager (Figs. 1-2 and col. 1, lines 6-10 and col. 3, lines 9-18). The Hoover apparatus disguises items that might be embarrassing if noticed by bystanders, using a resemblance to a pager (col. 3, lines 13-18). The apparatus is designed to be secured to clothing (Hoover, col. 5, lines 57-62). It would have been obvious to one of ordinary skill in the art to modify the apparatus of Whiting to include a resemblance to a personal electronic device such as a pager, as taught by Hoover, to disguise potentially embarrassing items.

17. Claim 11 is rejected under 35 U.S.C. 103(a) as being obvious over Whiting '758 in view of U.S. Patent No. 4,300,129 to Cataldo.

18. For Claim 11, Whiting teaches all the limitations of Claim 1, as described above in paragraph 7. Whiting teaches the control device being outwardly configured to resemble a wearable pouch or the like (paragraph 22). Whiting does not expressly disclose the device being configured to resemble a key fob, belt buckle, pen, broach, or decorative pin. Cataldo teaches a control device outwardly configured to resemble a belt buckle (Fig. 1 and Abstract). The control device allows the wearer to operate the

control device by concealed, misleading, or inconspicuous body motion (col. 1, lines 47-49). It would have been obvious to one of ordinary skill in the art to modify the apparatus of Whiting to include having the control device outwardly resemble a belt buckle as taught by Cataldo, to conceal it and allow it to operate by concealed or inconspicuous body motion.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Nos. 501,372 to Sherman, 5,057,094 to Abbey, and 5,643,236 to Hadley show urinary leg bags with drain valves. U.S. Patent Nos. 5,397,315 to Schmidt et al., 6,012,181 to Johnson et al., 6,090,087 to Tsukada et al., and U.S. Patent Publication No. 2004/0143229 A1 to Easter show electrically operated valves for urine collection devices. U.S. Patent Nos. 4,444,515 to Clark, 5,385,500 to Schmidt, 6,459,371 to Pike, and U.S. Patent Publication Nos. 2002/0140849 A1 to Slatter et al. and 2004/0102723 A1 to Horst show concealed electrical controls. U.S. Patent No. 6,066,164 to Macher et al. shows flat flexible cables in a wearable device. U.S. Patent Publication No. 2002/0005340 A1 to Marmaropoulos et al. shows an electrical switch for use in a garment. The remaining prior art references listed on the accompanying Form PTO-892 show the general state of the art.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571) 272-5964. The examiner can normally be reached on 8:30AM-5:00PM M-F.

Art Unit: 3761

21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571)272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paula L Craig
Examiner
Art Unit 3761

PLC

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

